

**SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT FOR USE WITH THE
PAYMENT CLEARED FINANCING ARRANGEMENT**

The Regents of the University of California
Contract Number W-7405-ENG-36
Department of Energy Account

This Special Financial Institution Account Agreement (hereafter referred to as "Agreement") entered into this ____ day of _____, _____, between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as "DOE") and The Regents of the University of California, a corporation existing under the laws of the State of California (hereinafter referred to as the "Contractor") and _____, a Financial Institution corporation existing under the laws of the State of _____, located at _____ (hereinafter referred to as the "Financial Institution") and being a member in good standing of the Federal Reserve Bank for general banking services to be performed for the Los Alamos National Laboratory (LANL).

RECITALS

- (a) On the effective date of October 1, 1997, DOE and the Contractor entered into Agreement(s) No. W-7405-ENG-36, as modified, providing for a payment cleared financing arrangement.
- (b) DOE requires that funds transferred to the Contractor thereunder be deposited in a Special Demand Deposit Account (hereafter referred to as the "Account" at a financial institution covered by Department of the Treasury-approved Government deposit insurance organizations that are identified in Vol TFM 6-9000).
- (c) The Account shall be designated "University of California, Los Alamos National Laboratory, Contract Number W-7405-ENG-36, DOE Special Bank Account."

CONVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that--

- (1) DOE shall have a title to the credit balance in the Account to secure the repayment of all funds transferred to the Contractor, and said title shall be superior to any lien, title or claim of the Financial Institution or others with respect to the Account.
- (2) The Financial Institution shall be bound by the provisions of said Agreement(s) between DOE and the Contractor relating to the transfer of funds into and the withdrawal of funds from the Account, which are hereby incorporated into this Agreement by reference, but the Financial Institution shall not be responsible for the application of funds withdrawn from the Account. After receipt by the Financial Institution of written directions from DOE, the Financial Institution shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions.

- (3) DOE, or its authorized representatives, shall have access to financial records maintained by the Financial Institution with respect to such Account at all reasonable times and for all reasonable purposes, including, but without limitation to, the inspection or copying of such financial records and any or all memoranda, checks, payment requests, correspondence, or documents pertaining thereto. Such financial records shall be preserved by the Financial Institution for a period of 6 years after the final payment under the Agreement.
- (4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Account, the Financial Institution shall promptly notify DOE at-

U.S. Department of Energy/NNSA
Financial Services Department
Albuquerque Division Services Branch
P.O. Box 5400
Albuquerque, New Mexico, 87185

And to the Contractor at-

University of California
General Counsel of the Regents
1111 Franklin Street
Oakland, CA 94607

- (5) DOE shall authorize funds that shall remain available to the extent that obligations have been incurred in good faith thereunder by the Contractor to the Financial Institution for the benefit of the Account. The Financial Institution agrees to honor upon presentation for payment all payments issued by the Contractor and to restrict all withdrawals against the funds authorized to an amount sufficient to maintain the average daily account collected balance for each calendar year in a net positive position and as close to zero as administratively possible without being negative.

The Financial Institution agrees to service the Account in this manner based on the requirements and specifications contained in the Contractor's Request for Proposal No. 55408-RFP-02, dated, _____ which is attached to this Agreement. The Financial Institution agrees that per-item costs, detailed in the form "Schedule of Services and Charges" contained in the Financial Institution's aforesaid proposal will remain constant during the term of this Agreement.

- (6) The Financial Institution shall post collateral, acceptable under United States Department of the Treasury Circular 176, with the Federal Reserve Bank in an amount sufficient to collateralize the highest balance in the Account included in this Agreement, less the Department of the Treasury-approved deposit insurance.
- (7) This Agreement, with all its provisions and covenants, shall be in effect for a term of three (3) years, beginning on the ____ day of _____, 2003, and ending on the ____ day of _____, 2006, unless earlier terminated as provided in this agreement.

The Contractor has the option to extend the term of the Agreement for up to two (2) years. The total duration of this Agreement, including the two (2) one-year options, shall not exceed five (5) years. Written notification of the option to extend will be provided by the Contractor not less than ninety (90) days prior to the expiration of this Agreement.

- (8) DOE, the Contractor, or the Financial Institution may terminate this Agreement at any time within the Agreement period upon submitting written notification to the other parties one hundred eighty (180) days prior to the desired termination date. The specific provisions for operating the Account during this one hundred eighty (180) day period are contained in Covenant 11.
- (9) DOE or the Contractor may terminate this Agreement at any time upon thirty (30) days' written notice to the Financial Institution if DOE or the Contractor, or both parties, find that the Financial Institution has failed to substantially perform its obligations under this Agreement or that the Financial Institution is performing its obligations in a manner that precludes administering the program in an effective and efficient manner or that precludes the effective utilization of the DOE's cash resources.
- (10) Notwithstanding the provisions of Covenants 8 and 9, in the event that the Agreement between DOE and the Contractor is not renewed or is terminated, this Agreement between DOE, the Contractor, and the Financial Institution shall be terminated automatically upon the delivery of written notice to the Financial Institution by the Contractor.
- (11) In the event of termination, the Financial Institution agrees to retain the Contractor's Account for an additional ninety (90) day period after the effective termination date, to allow for clearance of outstanding payment items. During this ninety (90) day period, DOE shall place on deposit in that Account sufficient funds to cover all outstanding payments items presented for payment.

During the entire ninety (90) day period, it is further understood that:

- (a) The Financial Institution shall maintain collateral in accordance with U.S. Department of Treasury Circular 176 the highest balance in the Account, less Federal Deposit Insurance Corporation coverage on the Account.
- (b) All service charges shall be consistent with the amounts reflected in this Agreement.
- (c) This Agreement shall continue in effect, for the ninety (90) day additional period, with exception of the following:
 - 1. Funds Authorized (Covenant 5)
 - 2. Term Agreement (Covenant 7)
 - 3. Termination of Agreement (Covenants 8 and 9)

All terms and conditions of the aforesaid proposal submitted by the Financial Institution that are not inconsistent with this ninety (90) day additional term shall remain in effect for this period.

The Financial Institution has submitted the forms entitled "Technical Representations and Certifications," and "Schedule of Services and Charges". These forms and Attachment A entitled "Financial Institution Account Agreement Statement of Work" are incorporated herein as an integral part of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement, which consists of _____ pages, to be executed as of the day and year first above written.

THE UNITED STATES OF AMERICA
BY: U. S. DEPARTMENT OF ENERGY

(U.S. Department of Energy)

(Date Signed)

The Regents of the University of California

(Signature of Contractor's Representative)

(Title)

(Date Signed)

(Name of Financial Institution)

(Name of Financial Institution Representative)

(Signature of Financial Institution Representative)

(Title)

(Address)

(Date Signed)

CERTIFICATE

I, _____, certify that I am the _____ of the corporation named as Contractor herein; that _____, who signed this Agreement on behalf of the contractor, was then _____ of said corporation; and that said Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporation powers.

(Corporate Seal) (Signature)

CERTIFICATE

I, _____, certify that I am the _____ of the corporation named as the Financial Institution herein; that _____, who signed this Agreement on behalf of the Financial Institution, was then _____ of said Bank; and that said Agreement was duly signed for and in behalf of said Bank by authority of its governing body and is within the scope of its corporate powers.

(Corporate Seal) (Signature)